

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Comment Sought On Application To Assign Licenses Under Second Thursday Doctrine, Request For Waiver And Extension Of Construction Deadlines, And Request To Terminate Hearing Application To Assign Licenses From Maritime Communications/ Land Mobile, LLC, Debtor-In-Possession (“MCLM”) To Choctaw Holdings, LLC (together, the “Application”)	DA 13-569 (the “PN”) WT Docket No. 13-85 File No. 0005552500 (the “Application”)

To the Secretary
Attention, Wireless Bureau Chief

Reply to
Choctaw Opposition to
Request to Extend Time and
Request to Compel MCLM to File a Required Section 1.65 Update
(or to Dismiss the Application)
and
Request to Provide a Supplemental Public Notice
(the “Two Requests”)

SkyTel hereby replies to the above captioned Opposition.

The last thing this proceeding (likely to be appealed by whomever loses) needs is to allow MCLM and its agents (Choctaw acts as the MCLM agent) to pursue the Application with its extraordinary relief requests stripped of the background and current court proceedings-- (including the Bankruptcy Chapter 11 plan confirmation Order appeal, and the New Jersey MCLM antitrust case)-- that are essential to inform the Application and these requests, and that can moot and otherwise affect this proceeding and any decision in the proceeding. It is MCLM and its affiliates that have, from day one, delayed compliance with basic FCC law. They seek expedition only when they believe they can hide the relevant background and current actions

they cannot control that is taking them to task. However, as to the Two Requests --

(i) There is no “fatally flawed” process in the Two Requests. The Two Requests filing was filed as the PN instructed: see p. 7 of the Two Requests. Contrary to the Opposition, this instruction was clear and did not exempt any type of “pleading” from the instruction including a request to extend time.¹

(ii) Contrary to the Opposition, the time for any pleading of a noticed matter runs from the public notice, not from a date that a party earlier suggests it will submit a filing (that ends up noticed) or even when the filing was made. All petitions to deny, and comments in a proceeding the FCC sets up for comments, are based on the date of the public notice of the subject filing or matter. No party commences to prepare or prepares comments or a petition to a matter that may be before the FCC, or that as simply filed, until the FCC places it on public notice and by that commences the pleading cycle. The most critical events in the bankruptcy appeal, and the NJ case, postdated both the filing of the Application and the FCC placing it on Public Notice. The MCLM failure to file a Section 1.65 Report is ongoing.

Thus, the Two Requests were timely filed and requested reasonably additional time—for all persons that may file comments or a petition to deny.

1. *MCLM does not oppose the Two Requests and they are thus unopposed by the only entity that has the standing to seek the subject Second Thursday relief. The Two Requests provide sound reasons—including two US court proceedings—that they should be granted.*

Choctaw cannot speak for MCLM and only MCLM can seek so-called “Second

¹ However, as to proper procedure or lack thereof, Choctaw timely obtained a copy of the Two Requests. Rather than follow proper procedure, Choctaw then served a copy of its Opposition in the MCLM Hearing, docket 11-71 in which Choctaw was not even a party (it intervened months go, and then once it was subject to discovery requests, it withdrew: but now it believes it can intervene at will, and address the Judge, his staff, and all the parties in that Hearing.

Thursday” relief. Thus, the Opposition is ineffective. Alternatively, if Choctaw is in de facto control of MCLM, then that is in violation of FCC requirements to obtain FCC approval of transfer of control, and its actions would be unlawful and void including this Opposition. However, out of an abundance of caution, SkyTel further replies as follows:

2. As to the MCLM bankruptcy, what is relevant to the Two Requests Choctaw side steps: the glaring facts that (1) MCLM failed to file a required Section 1.65 Report on the SkyTel appeal of the bankruptcy order that is the basis of the captioned Application, PN and docket, and which if successful will moot these, and (2) the appeal has facts and law that is essential to an understanding of and disposition of the MCLM requests for Second Thursday (and other extraordinary) relief: the appeal is in large part based upon discovery and testimony obtained in the bankruptcy proceeding, that shows the MCLM chapter 11 plan (with Choctaw) is not feasible since it is not feasible for MCLM to save any of the FCC licenses by Second Thursday, or “Footnote 7” relief, or from automatic termination (as to the site based licenses) or by defending against charges in the HDO 11-64.

The Opposition incredulously suggests that a legal challenge to the foundation of the extraordinary Application, the bankruptcy court Chapter 11 Plan confirmation order—the challenge being the SkyTel appeal of that Order—is not a matter that MCLM, the Applicant, should have informed the FCC of in a Section 1.65 Report.²

As explained in the Two Requests and herein, this SkyTel appeal is relevant both on procedure and on substance, to the Application and anyone that may want to Comment or petition.

MCLM should not be rewarded for failure to inform the FCC in a proper Section 1.65

² Choctaw further misleads in the Opposition by suggesting that the recent bankruptcy court denial of the SkyTel request for a limited stay pending appeal, if of any significance to the actual appeal. In fact, MCLM asserted to the court that, in sum, there was nothing to stay, and on that basis, the request for a limited stay was essentially moot.

Report of these matters, by a pleading cycled that is not created based upon this knowledge and compliance. This applies also to the MCLM Antitrust case, the NJ litigation.

3. As to this “New Jersey” litigation, Choctaw obscures the essence,³ which is that the entire factual complaint is encompassed in the current Sherman Act cause of action—which MCLM and Mobex failed to get dismissed—that is the “single claim” Choctaw attempts to distort and downgrade as if inconsequential.⁴ However, it is not only the all encompassing factual and damage claim, but the one directly related to FCC law: violation of US antitrust law is also violation of the Communications Act under 47 USC § 314 and may lead to revocation by the court under §313. (There were no “myriad of claims” either, but that is not relevant to the Two Requests.)

Additional Matters

4. Choctaw virtually admits, on page 1, that MCLM has violated FCC law to the degree that its Licenses should be revoked, since it indicates that the “resolution of the licenses” is only by get-out-of-jail-free “Second Thursday” relief. It is MCLM and Choctaw members (the secured lenders in MCLM that funded the wrongdoing, taking as security the licenses and license proceeds—and personal guarantors of MCLM owners and direct controllers (the Depriests) that have done nothing since MCLM began but to violate FCC law, and take and warehouse licenses in violation of law. MCLM and its funders, Choctaw members, could have had no delay at all,

³ The “stay” requested in the NJ case was, as shown on PACER, due to a settlement with two other defendants (Paging Systems Inc. and Touchtel) and had nothing to do with MCLM, or with trying to delay the NJ case or any MCLM action with its licenses that the Opposition suggests are valid “hold[ings].” Spurious and diversionary pleading provisions violate section 1.52.

⁴ If Choctaw, as it makes clear, is privy to MCLM then it knows, but does not want the FCC to know, the discovery obtained in the NJ litigation that is of core relevance to demonstrate the gave violations by MCLM of US antitrust law, FCC law, and criminal codes. This extent is directly relevant to the weighing under the so-called Second Thursday doctrine. This takes time to present in a petition to deny and comments—and much of this evidence was obtained only recently, and in spite of MCLM unlawful withholding of the evidence.

had they complied with basic FCC law.

5. Choctaw persists in its attempts to be the voice of MCLM in its “Background” section, but it has no basis to do so under FCC law, and it submits no declaration in support. In any case, its reference to the “California Litigation” is a smokescreen diversion—just wasting FCC staff time. Further, court cases do not “delay” FCC licenses, and for an attorney to suggest that to FCC staff is nonsense. In fact, MCLM argued the opposition in these cases—that no court action can touch its FCC licenses and only the FCC has authority to deal with its licenses, and in fact MCLM leased and sold off its licenses in the period of these court cases.

Respectfully,

/s/ Electronically submitted. Signature on file.

Warren Havens
Individually and as President of each of:

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⁵ For purpose of this submission, for convenience, Skybridge, which maintains its own office, uses the listed address of the LLCs.